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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

TONI LANG, Plaintiff and Appellant, v. QUALITY CAR CO., INC., Defendant and Respondent.	E053184 (Super.Ct.No. RIC475224) OPINION

APPEAL from the Superior Court of Riverside County. Roger T. Picquet, Judge. (Retired judge of the San Luis Obispo Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Toni Lang, in pro. per., for Plaintiff and Appellant.

Early, Maslach & Van Dueck, B. Eric Nelson; Bevins, Hellesen & Glauser and Kevin B. Bevins for Defendant and Respondent.

Plaintiff and appellant Toni Lang appeals after the trial court granted nonsuit to defendant and respondent Quality Car Co., Inc. (the dealer), in plaintiff's action for

breach of contract or warranty and violation of the lemon law, concerning plaintiff's purchase of a used car. We affirm the judgment.

FACTS AND PROCEDURAL HISTORY

Plaintiff bought a used 2001 Ford Explorer from the dealer in January 2005. The purchase was made subject to a 30-day, 1,000-mile warranty from the dealer. Plaintiff also purchased a separate service contract written by Prizm Administrative Services (the service contractor).

Shortly after the purchase, plaintiff began to experience difficulties with the car. The dealer made repairs on these problems within a short time after plaintiff had taken delivery of the car. In September 2006, about 20 months after the initial purchase, the car developed new mechanical problems. Plaintiff made a claim for the repairs under the service contract, but the service contractor denied coverage, asserting that the car had been improperly fitted with oversized wheels and tires, voiding the service contract. Later, the service contractor changed its position, and agreed to extend coverage, but plaintiff never contacted the service contractor again. Plaintiff filed her action against both the dealer and the service contractor, but later dismissed the suit, without prejudice, as to the service contractor. Thus, the suit proceeded against the dealer alone.

The case came on for trial in October 2010. Plaintiff presented the testimony of herself and her boyfriend, but she has failed to provide a reporter's transcript of the testimony in the record on appeal. She also offered documents into evidence, but again fails to produce these documents in the appellate record.

Plaintiff devotes much of her briefing to a claim that her attorney improperly withdrew from representation. Apparently, counsel moved to withdraw, but before the motion was ultimately ruled upon, plaintiff's attorney filed a substitution of attorney, substituting plaintiff in propria persona in lieu of former counsel. This substitution of attorney was filed on April 8, 2009, over one year before the case ultimately went to trial in October 2010. Plaintiff asserts that she tried in the intervening months to obtain new counsel, but was unsuccessful in securing new representation.

Plaintiff further complains that her former counsel retained numerous original documents that might have been helpful to her case. However, she fails to identify or describe any such documents. It is thus impossible for us to evaluate the relevance of any such evidence to the issues at trial.

Upon the presentation of plaintiff's evidence at trial, the dealer moved for nonsuit. The trial court granted the motion and gave a judgment of nonsuit in the dealer's favor. Plaintiff now appeals.

ANALYSIS

I. Standard of Review

"On review of a judgment of nonsuit, as here, we must view the facts in the light most favorable to the plaintiff. '[C]ourts traditionally have taken a very restrictive view of the circumstances under which nonsuit is proper. The rule is that a trial court may not grant a defendant's motion for nonsuit if plaintiff's evidence would support a jury verdict in plaintiff's favor. [Citations.] [¶] In determining whether plaintiff's evidence is

sufficient, the court may not weigh the evidence or consider the credibility of witnesses. Instead, the evidence most favorable to plaintiff must be accepted as true and conflicting evidence must be disregarded. The court must give "to the plaintiff['s] evidence all the value to which it is legally entitled, . . . indulging every legitimate inference which may be drawn from the evidence in plaintiff['s] favor . . . ." [Citation.] The same rule applies on appeal from the grant of a nonsuit. [Citation.]" (*Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1214-1215.)

II. Plaintiff Has Provided No Evidence Showing That She Is Entitled to Judgment

A. *The Alleged Abandonment by Counsel is Irrelevant*

The crux of plaintiff's complaint is that she lost at trial, essentially because her trial attorney improperly abandoned her by improper methods, and because he retained important documents which would have helped her to prove her case.

Plaintiff urges that, when counsel first filed his motion to withdraw as her attorney, he did so without providing notice to her. That is, the motion was served on plaintiff at an improper address, and she thus had no notice of the pending application. The motion was filed on March 11, 2009, and scheduled to be heard on May 7, 2009. A case management conference hearing set for March 24, 2009, was continued to the same date, May 7, 2009; plaintiff's counsel waived notice of the continued case management conference hearing, so plaintiff asserts that she also had, at least initially, no notice of that hearing.

Before the hearing date of May 7, 2009, however, counsel filed a substitution of attorney, substituting plaintiff in propria persona in his stead. Plaintiff advances two problems with this substitution: First, counsel had required plaintiff to sign the substitution form, in blank and undated, when she first engaged him in 2007. It was not signed at or near the time the substitution was actually filed. Second, although plaintiff's mailing address is correct on the proof of service, plaintiff did not actually receive a copy of the substitution of attorney. Thus, she had no actual notice that her attorney's representation had ceased.

In approximately February 2009, counsel stopped communicating with plaintiff. On April 27, 2009, plaintiff telephoned the clerk of the court and learned that a continued case management conference was calendared for May 7, 2009. Plaintiff appeared that day; counsel was leaving the courtroom just as she entered, and he passed her without speaking to her. She then discovered that counsel's representation had ceased. The register of actions indicates that counsel's motion to be relieved was vacated, because the substitution of attorney had been filed. As to the case management conference, the court ordered the matter to mediation, with notice given by the clerk.

Plaintiff complains that the trial court should have detected that counsel's motion to withdraw had been served at the wrong address, should not have accepted a waiver of notice of the continued case management conference hearing from an attorney who was seeking to withdraw, and should have discerned that plaintiff had not received any notice that counsel had withdrawn or substituted out of the case. She urges that because her

attorney allegedly committed violations of his ethical duties to her, the court should, at the least, have opened an inquiry into the withdrawal or substitution of attorney.

In her complaints about the withdrawal of her attorney, plaintiff has failed to present an issue warranting reversal of the judgment.

As to the supposed failure to serve plaintiff with notice of the motion to withdraw, because it had been mailed to an incorrect address, the matter is of no moment. The trial court never ruled on that motion, and it was vacated. As to the waiver by counsel of notice of the continued case management conference hearing, plaintiff herself inquired and was informed before the hearing of its date and time. She had actual notice of, and actually attended, that hearing. No prejudice arises. As to the substitution of attorney, plaintiff admits that it was served by mail, using her correct address, although she asserts that she never actually received it. She admits signing the substitution of attorney, although she alleges that she did so in blank and without a date, two years before counsel completed and filed it. Nothing on the face of the substitution of attorney gives any indication of irregularity, and plaintiff does not show that she ever brought the circumstances to the trial court's attention.

Plaintiff has provided no record which shows that she ever complained about the departure of her former attorney, ever informed the court that she was not prepared to go to trial, or otherwise indicated she had any objection to the change in representation. The trial came on in October 2010, more than one year after the substitution of attorney had been filed. Plaintiff provides nothing to show that, in all the intervening time between

the substitution of attorney and the date of trial, she ever raised any issue with respect to her counsel's substitution out of the case.

Similarly, although plaintiff now complains that her attorney retained original documents which were pertinent to the case, she gives no description of these documents. Nor does she indicate what issues the documents addressed, or what evidence the documents would have supplied concerning any of the contested issues in the case.

It is the duty of an appellant to provide an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575.) Plaintiff has failed to do so, even as to the issue (counsel's alleged misconduct in abandoning her and withholding documents) which she deems significant.

In any event, the issue of counsel's alleged misconduct is irrelevant to the appeal. The appeal is from the judgment of nonsuit. As indicated by the standard of review, the propriety of the trial court's ruling on the motion for nonsuit is dependent entirely upon the evidence concerning the matters in issue at trial. The substitution of attorney, filed over one year before trial, has no relation to the evidence received at trial, except perhaps tangentially as to the documents plaintiff asserts were improperly retained by departed counsel. However, the failure to describe or provide any record concerning the missing documents defeats any claim of error.

B. *The Record Is Inadequate to Establish Any Error in the Granting of Nonsuit*

Just as the record is inadequate to assess plaintiff's claims with respect to the purportedly improper substitution of counsel, so the record is inadequate to conduct

appellate review of the judgment of nonsuit. Although a reviewing court must accept the facts in the light most favorable to the plaintiff, here plaintiff has failed to provide any facts whatsoever that were adduced at trial. She has provided the minute order showing that plaintiff's witnesses testified, but no summary of the substance of the testimony. Similarly, the judgment of nonsuit is provided, but it summarizes no factual matters. The reporter's transcript ordered by plaintiff does not include the trial testimony.

It was plaintiff's burden to show error by providing an adequate record for review. (*Cypress Security, LLC v. City and County of San Francisco* (2010) 184 Cal.App.4th 1003, 1014.) She failed to do so.

DISPOSITION

Because plaintiff has failed to affirmatively demonstrate error, the judgment is affirmed. Costs on appeal are awarded to defendant.

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MCKINSTER
J.

We concur:

HOLLENHORST
Acting P.J.

RICHLI
J.